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EPA's Goals

Early Transfer Authority



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History & Evolution of CERCLA 120(h)(3) Provisions

1980: CERCLA was enacted to provide for the cleanup of sites contaminated by chemicals designated as hazardous substances

1986: SARA amendments added Section 120 which directed Federal Agencies to comply with CERCLA and, among other provisions, imposed certain requirements to be met prior to the transfers of real property owned by Federal Agencies

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Real Property Transfer

- Deeds for parcels to be transferred to a non-Federal entity were required to contain the previous notice, as well as certain covenants:
 - All necessary remedial actions have been taken
 - Any further action found to be necessary will be conducted by the U.S.

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1996 Deferral Authority

- Authorizes EPA and the Governor of a state to defer “has been taken” covenant requirement for parcels at NPL installations
- Authorizes the Governor of a state to defer the covenant requirement for non-NPL installations

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EPA's Early Transfer Guidance

- EPA Guidance on the transfer of Federal property by deed before all necessary response action has been taken pursuant to CERCLA Section 120(h)(3)
 - Real property listed on the NPL
 - Held by a Federal agency (landholding Federal agency)
 - Where the release or disposal of hazardous substances has occurred, but where all necessary response action has not yet been taken

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Guidance Does Not Address:

- Transfers of property at non-NPL installations
- Transfers between Federal agencies
- Transfers of uncontaminated parcels/CERFA parcels
- Transfers of parcels with only petroleum contamination
- State requirements for NPL transfers

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Guidance Does Not Require:

Interagency Agreement (IAG) or Federal Facilities Agreement (FFA)

- “....existence of an IAG will significantly aid the Agency in making the covenant deferral decision.”

Record of Decision (ROD)

- Schedule for selection and implementation of remedy must be provided

Remedial Investigation (RI) Report

- Presumption that RI for parcel will be complete, but is not required if the Federal agency can demonstrate that a completed RI is not required for EPA's determination

Risk Assessment

- Presumption that CERCLA risk assessment will be complete
- Federal agency may demonstrate that full risk assessment is not required

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Transferee Conducted Cleanup

- Transferee response action assurances and agreements
 - Landholding Federal agency remains responsible
 - Technical and financial capacity of transferee must be demonstrated
 - Cleanup must meet CERCLA/NCP requirements

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Deferral Authority

- EPA Administrator has delegated authority to EPA Regional Administrators
- EPA Regions may redelegate to level of ROD signature
- State must concur for deferral to be effective
- Deferral must occur before property is transferred

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Mather AFB and Early Transfer

- 25-acre parcel at NPL installation
- No surface contamination (contaminated groundwater)
- ROD signed (groundwater system under construction)
- No wells or treatment plant on parcel

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Issues Addressed During FOSET Development at Mather AFB

- Size of parcel in relation to EDC lease/conveyance
- Potential for LBP contamination associated with structures
- Potential UXO associated with nearby historic Bombing Range
- Crafting language which correctly expressed agreed upon concepts
- Defining a Mechanism to assure that the State could enforce deed restrictions